

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

tmd3574/va

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February 17, 2011
9:00 AM

IN RE:

Chapter 13

WILFRED PASCASIO
CHRISTINE WALTER,

Case No: 110-47561-ESS

Debtors.

NOTICE OF MOTION

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PLEASE TAKE NOTICE, that upon the within application, the Chapter 13 Trustee will move this court before the Honorable Elizabeth S. Stong, U.S. Bankruptcy Judge, at the United States Bankruptcy Court, 271 Cadman Plaza East, Brooklyn, New York, Courtroom 3585 on February 17, 2011 at 9:00 AM, or as soon thereafter as counsel can be heard, for an Order pursuant to 11 U.S.C. Section 1307(c) for cause, dismissing this Chapter 13 case and for such other and further relief as may seem just and proper.

Responsive papers shall be filed with the Bankruptcy Court and served upon the Chapter 13 Trustee, Marianne DeRosa, Esq., no later than seven (7) business days prior to the hearing date set forth above. Any responsive papers shall be in conformity with the Federal Rules of Civil Procedure and indicate the entity submitting the response, the nature of the response and the basis of the response.

Date: Jericho, New York
January 24, 2011

/s/ Marianne DeRosa
MARIANNE DeROSA, TRUSTEE
100 JERICHO QUADRANGLE, SUITE 208
JERICHO, NY 11753
(516) 622-1340

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13 110-47561-ESS

WILFRED PASCASIO
CHRISTINE WALTER,

Debtors.

APPLICATION

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TO THE HONORABLE ELIZABETH S. STONG, U.S. BANKRUPTCY JUDGE:

Marianne DeRosa, Chapter 13 Trustee in the above-captioned estate, respectfully represents the following:

1. The Debtors filed a petition under the provisions of 11 U.S.C. Chapter 13 on August 10, 2010, and, thereafter, Marianne DeRosa was duly appointed and qualified as Trustee.

2. The Debtors' proposed Amended Chapter 13 Plan, (hereafter "The Plan"), dated January 4, 2011, filed with the Court on January 4, 2011, and reflected in the Court's docket as number 60 provides for a monthly Plan payment of \$1,250.00 per month for a period of eleven months and a monthly Plan payment of \$1,665.00 per month for a period of forty-nine months. Additionally, the Plan provides for full repayment to all filed secured, priority and general unsecured proofs of claim.

3. The Trustee objects to the confirmation of the Plan because the Debtors' proposed Plan payment is insufficient to pay secured claims in full and the Debtors' supporting budget, Schedules I and J, filed with the Court on August 10, 2010 and reflected in the Court's docket as number 1, does not show the ability to increase the plan payments, and therefore the Debtors cannot comply with the Plan as required by 11 U.S.C. §1325(a)(5).

4. Furthermore, the Debtors do not qualify for Chapter 13 relief as the Debtors' secured debt, as indicated by Schedule D, exceeds the jurisdictional limit of \$ \$1,081,400.00, pursuant to 11 U.S.C. §109(e).

5. In addition, the Debtors have failed to:

- a. provide the Trustee with proof of post-petition mortgage payments seven business days before the first meeting of creditors as required by E.D.N.Y. LBR 2003-1(a)(vi);
- b. provide the Trustee with proof of post-petition mortgage payments seven days before the first date set for confirmation of the Chapter 13 Plan as required by E.D.N.Y. LBR 2003-1(b)(i).

6. The Plan cannot be confirmed and as a result a delay has occurred that is prejudicial to the rights of creditors. The case must be dismissed under 11 U.S.C. §1307(c)(1) and (c)(5).

7. Each of the foregoing constitutes cause to dismiss this Chapter 13 case within meaning of 11 U.S.C. Section 1307(c).

8. During the pendency of this bankruptcy estate, the Trustee has incurred costs and expenses in the ordinary course of administering this case and seeks reimbursement of \$350.00 to cover these expenses.

WHEREFORE, the Chapter 13 Trustee respectfully requests that this Court enter an Order denying confirmation and dismissing this Chapter 13 case, and granting the Chapter 13 Trustee the sum of \$350.00 to be deducted from the Debtors' net receipts, if any, for administrative costs and expenses incurred during the pendency of this case, and for such other and further relief as may seem just and proper.

Dated: Jericho, New York
January 24, 2011

/s/ Marianne DeRosa
Marianne DeRosa, Trustee

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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IN RE:

Chapter 13 Case No: 110-47561-ESS

WILFRED PASCASIO
CHRISTINE WALTER,

CERTIFICATE OF SERVICE
BY MAIL

Debtors.

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This is to certify that I, Viola Astorga, have this day served a true, accurate and correct copy of the within Notice of Motion and Application by depositing a true copy thereof enclosed in a post-paid wrapper, in an official depository under the exclusive care and custody of the U.S. Postal Service within New York State, addressed to each of the following persons at the last known address set forth after each name:

WILFRED PASCASIO
8 Cambridge Place
Brooklyn, NY 11238

CHRISTINE WALTER
8 Cambridge Place
Brooklyn, NY 11238

DAVID S HAMILTON
ZEICHER, ELLMAN & KRAUSE LLP
575 Lexington Avenue
New York, NY 10022

TANYA P DWYER
DWYER & ASSOCIATES LLC
11 Broadway; Suite 615
New York, NY 10004

WACHOVIA MORTGAGE
C/O FEIN, SUCH & CRANE, LLP
28 East Main Street; Suite 1800
Rochester, NY 14614

JP MORGAN CHASE BANK NA
C/O FEIN, SUCH & CRANE, LLP
28 East Main Street; Suite 1800
Rochester, NY 14614

GE MONEY BANK
RECOVERY MANAGEMENT SYSTEMS CORP
25 SE 2nd Avenue; Suite 1120
Miami, FL 33131

WELLS FARGO BANK
C/O FEIN, SUCH & CRANE
28 Main Street; Suite 1800
Rochester, NY 14614

This January 24, 2011

/s/Viola Astorga

Viola Astorga, Paralegal
Office of the Standing Chapter 13 Trustee
Marianne DeRosa, Esq.
100 Jericho Quadrangle, Suite 208
Jericho, New York 11753
(516) 622-1340

Index No: 110-47561-ESS
UNITED STATES BANKRUPTCY COURT
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IN RE:

WILFRED PASCASIO
CHRISTINE WALTER,

Debtors.

NOTICE OF MOTION, APPLICATION
and
CERTIFICATE OF SERVICE

MARIANNE DeROSA, TRUSTEE
100 JERICO QUADRANGLE, SUITE 208
JERICO, NY 11753
(516) 622-1340
